1952 K File No. Nurses II 52 (R)

Legal Dept-

B BRANCH p 5(E)

Subject:— Rules under the Bombay Nurses Midwives and Health Visitors Registration Act- 1935-

File No. Nurses II 152 (R)

Gen. 104 c.

2.78—B

Legal Department.

Under the scheme of the Bombay Nurses, Midwives and Health Visitors' Registration Act, 1935, the registration of a person as a nurse etc., is for life time of the person concerned, unless his name is removed for disciplinary measures against him under section 13. In the absence of any specific provisions in the Act on the lines of sections 9A and 17 of the Bombay Medical Act, 1912, or section 39 of the Dentist Act, 1948 (XVI of 1948) or clause 16 of the draft of the Bombay Nurses, Midwives and Health Visitors Bill furnished to Local Self Government and Public Health Department with U.R. No.19300 dated 1st December 1951, it will not be possible to make any rule compelling persons to renew their registration from time to time and charging fees for such renewal. The proposed rule is, therefore, outside the scope of the Act. For the purpose in view the Act will have to be suitably amended.

Id/- B.P.DALAL.

Additional Deputy Secretary to Government.

U.R.to L.S.G. & P.H.D.,No.8430, dated the 20th May 1952.

RHB.
8.7.

The Surgeon-General in his letter at page 65 ante states that the last date for holding the Assistant Midwives' Examination should be 31st May 1954. What he means thereby is that after such examination is held the rules regarding the Assistant Midwives' Examination should be cancelled. In paragraph 1 relating to the Rules of Examination for Assistant Midwives published under heading "(3) Examination for Assistant Midwives" under Schedule IV of the Bombay Nurses, Midwives and Health Visitors Registration Rules, 1935, it is provided that the examination shall be held every three months on the last Mondays in February, May, August and November each year. Probably the last Monday in the month of May in the year 1954 falls on 31st May of that month and, therefore, the Surgeon General has suggested that date as the date on which the relevant rules should be cancelled. But in order that the examination should be validly held on 31st May 1954 and the results declared under the rules, it is necessary that the rules should be in force for some time after 31st May 1954. The date of cancellation of the relevant rules should therefore be some suitable date in the month of June or July 1954 depending upon the date prescribed for the declaration of results. The drafts at pages 29 and 75 ante are in order subject to what is stated above.

2. As regards pargraph 5 of the Local Self Govt. and Public Health Department note at page 71 ante, it may be observed that the rules at 'A' on page 61 ante may be issued any time after the notifications at pages 29 and 75 ante are finally issued and before the date on which the amendments would take effect.

Sd/-

Additional Deputy Secretary to Government.

U.R.to L.S.G. & P.H.D. No.12142, dated the 23rd July 1952.

RHB.5.7.

Legal Department.

Item 1 of the Statement at page 71 ante.- Sub-section (1) of section 23 of the Bombay Nurses, Midwives and Health Visitors Registration Act, 1935, empowers the Council to make by-laws but sub-section (2) of that section provides that no by-law made by the Council shall come into force until it has been confirmed by the State Government, with or without modification or amendment. The view taken by the Council that Government can modify the by-laws, apart from the question of inconsistency with the Act or the Rules, only on the ground of increase in the financial responsibility of Government is not correct.

Item 2 at page 71 ante.- By-law 32 of the Bombay Nurses, Midwives and Health Visitors Registration By-laws, 1938, lays down that all matters relating to leave, allowances and other conditions of service of the Registrar and other servants of the Council shall, so far as may be, be regulated in accordance with the Bombay Civl Services Rules for the time being in force. The words "so far as may be" in the by-law do not enable the Council to make any substantial modification in the Bombay Civil Services Rules in their application to its staff by means of a resolution. If it si intended that the Bombay Civil Services Rules should apply with certain modifications such modifications will have to be made in the by-laws themselves; such modification would not be covered by the expression "so far as may be". If under any provision of the Bombay Civil Services Rules Government is empowered to condone any irregularity

such.....

such powers can be exercised by the Council as the Council will have the powers of Government under the Bombay Civil Services Rules in their application to its staff.

Item 3 at page 73 ante.- Subject to the remarks made above, the leave and other conditions of service of the Registrar and the Accounts Clerks will have to be determined in accordance with the provisions of the Bombay Civil Services Rules applicable to Government servants of the corresponding grades.

Item 4 at page 73.- Please see remarks on items 2 and 3 above.

Item 5 at page 75 ante.- Section 23(1)(e),(f) and (g) of the Act confer unrestricted powers on the Council to make by-laws for appointment of its servants, for determining their conditions of service and for establishing a provident fund for them, subject only to the power of confirmation given to Government by sub-section (2) of that section. The position under the Bombay Medical Act, 1912 and the Bombay Medical Practitioners Act, 1938, is quite different. Section 5 of the former Act and section 14 of the latter Act themselves put restrictions on similar powers to be exercised by the Medical Council and the Board, respectively. It is a well recognised principle that where there is a competent authority to which an Act of the Legislature has entrusted the power of making rules, regulations or by-laws, it is for that authority to decide what regulations, rules or by-laws are necessary and any rules, regulations or by-laws which they decide to make should be supported, unless they are inconsistent with the Act or are manifestly unreasonable or unfair. If, therefore, the Council desires to frme by-laws to lay down separate rules to determine the conditions of service of its staff it would be competent for the

the Council to do so. The confirmation of such by-laws cannot be held up by Government except on reasonable and valid grounds. The ground that the proposed by-laws are not on the lines of rules or by-laws under other enactments, having different provisions, would not be avalid ground to refuse confirmation. Similarly under the power to confirm by-laws with modification or amendment conferred by section 23(2) it would not be feasible for Government itself to amend the by-laws as suggested by the Surgeon General. The power is intended to be used in respect of by-laws submitted by the Council to Government for its confirmation. There is, however, no objection to suggest the proposed by-law for the consideration of the Council

Para 2 of Local Self Government and Public Health Department note at page 69 ante.- For the reasons stated by the Council in its letter at page 67 ante, rule 9 under the heading "(1) General Rules" in Schedule IV to the Bombay Nurses, Midwives and Health Visitors Registration Rules, 1935, may be retained and the modification suggested by the Council may be accepted. Clause (4) of the notification on pages 64-65 ante may be amended by omitting reference to rule 9, before suitably the notification is finalised.

Sd/-

Additional Deputy Secretary to Government.

U.R.to L.S.G. & P.H.D. No.139-L, dated 11th July 1952.

RHB.
5.7.